

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID LEE ANTION, Ph.D.
9530 East Imperial Highway, Suite M
Downey, CA 90242

Psychologist's License No. PSY 9037

Respondent.

Case No. W250

OAH No. L2004020469

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
the Board of Psychology as it's Decision in the above-entitled matter.

This Decision shall become effective April 1, 2005.

IT IS SO ORDERED.

Date: March 1, 2005

Jaqueline Horn, Ph.D.

JACQUELINE HORN, PhD, PRESIDENT
BOARD OF PSYCHOLOGY

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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 15, 16 and 17, 2004, in San Diego, California.

Samuel K. Hammond, Deputy Attorney General, represented Complainant Thomas S. O'Connor, the Executive Director of the Board of Psychology (the Board), Department of Consumer Affairs, State of California.

John L. Fleer, Attorney at Law, represented Respondent David Lee Antion, Ph.D. (Dr. Antion) who was present throughout the administrative proceeding.

On November 17, 2004, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 8, 2003, the Amended Accusation was signed on behalf of Complainant Thomas S. O'Connor, the Board's Executive Director, by Deputy Attorney

General Samuel K. Hammond.¹ The Amended Accusation was served on Dr. Antion and his attorney.

The Amended Accusation alleged Dr. Antion engaged in sexual misconduct, gross negligence and committed repeated negligent acts during psychotherapy with a 15-year-old female patient. Any new allegations set forth in the Amended Accusation were controverted by the Notice of Defense and Special Notice of Defense previously filed.

On March 19, 2004, a Notice of Hearing was served on Dr. Antion and his attorney by mail, setting a four-day administrative hearing to commence on November 15, 2004.

On November 15, 2004, the administrative record was opened. This matter was consolidated for hearing with a Board of Behavioral Sciences disciplinary action arising out of the same allegations. Some jurisdictional documents were presented. Sworn testimony and documentary evidence was received on November 15, 16 and 17. On November 17, closing arguments were given, the record was closed, and the mater was submitted.

The Practice of Psychology

2. At all times relevant to this matter, Business and Professions Code section 2900 set forth the following legislative findings:

“The Legislature finds and declares that practice of psychology in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.”

Under Business and Professions Code section 2903:

“No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter . . .

The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.”

Business and Professions Code section 2903 also stated:

¹ The Accusation and the Notice of Defense were not offered, so it is impossible to establish a precise jurisdictional timeline. The Special Notice of Defense was provided. It was signed by counsel and was dated February 26, 2003.

“Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.”²

The practice of psychology does *not* include prescribing drugs, performing surgery or administering electroconvulsive therapy. Business and Professions Code section 2904.

3. Because each individual is unique – both the patient and the psychotherapist – the actual practice of psychotherapy may involve the application of a number of approaches, a variety of theoretical orientations and many different psychotherapeutic techniques. The goal should be the same – to help uncover the issues in the patient’s life, to help the patient clarify those issues, and to help the patient to face and resolve the issues in a meaningful way, thus becoming a more effective person.

Psychotherapy is not simply a therapist’s unconditional positive regard for a patient, although establishing a therapeutic relationship is critical. Nurture, support and care by themselves do not constitute psychotherapy. While a therapist should make reasonable efforts to provide a safe and accepting environment in which a patient can explore the forces that motivate behavior, providing emotional comfort in a psychotherapy session is not the objective; indeed, some discomfort may be likely to yield therapeutic results. Psychotherapy is not simply giving advice. The world is full of advice. A patient who comes to treatment is often too full of good intentioned advice and has become lost.

Psychotherapy is part art, part science. Much of it is improvisational. Results and outcomes are not guaranteed. However, there are recognized standards of care within the practice which ordinary, reasonable and prudent psychologists are expected to follow.

Unprofessional Conduct

4. Business and Professions Code section 2960 identifies “unprofessional conduct” as grounds to suspend or revoke a license to practice as a psychologist.

“Unprofessional conduct” includes “Being grossly negligent in the practice of his or her profession,” “Any act of sexual abuse . . . with a patient . . . or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist,” and “Repeated acts of negligence.”

² Business and Professions Code section 2908 provides that nothing in the Psychology Licensing Law prevents qualified members of other recognized professional groups licensed to practice in California (such as physicians, clinical social workers, educational psychologists, marriage and family therapists, optometrists, psychiatric technicians, or registered nurses, attorneys, duly ordained members of the recognized clergy, or duly ordained religious practitioners) “from doing work of a psychological nature consistent with the laws governing their respective professions” provided they do not hold themselves out to the public by suggesting they are licensed to practice psychology.

Dr. Antion's Background, Education and Training

5. David L. Antion (Dr. Antion) is a licensed psychologist.

Dr. Antion was born in Cannonsburg, Pennsylvania. He received a Bachelor of Arts in Religion and Speech from Ambassador College in Pasadena, California, in 1959; a Master of Science in Counseling and Psychology from California State University, Fullerton in 1977; and, a Ph.D. from the University of Southern California in Educational Psychology in 1982.

6. Dr. Antion was an Associate Professor of Psychology at Ambassador College in the mid-1970s. While he was employed at Ambassador College, Dr. Antion provided pastoral counseling to church members, which led to his interest in a career in counseling and psychotherapy.

In 1978, Dr. Antion became licensed as a Marriage Family and Child Counselor in California (License No. MFC 12090). Dr. Antion has been in private practice as a licensed MFCC since 1978.

In 1979, Dr. Antion was awarded an Educare Scholarship from the University of Southern California. He began doctoral studies at USC in Clinical Psychology, but changed his field of study to Educational Psychology because of a dispute within the clinical psychology department.

In 1981, Dr. Antion received a California Community College Teaching Credential authorizing him to teach Psychology and Professional Education to community college students. In 1982, Dr. Antion was a substitute teacher at Pasadena City College and he was an Instructor at Pasadena City College in 1985-1986 in the field of Psychology.

In 1985, Dr. Antion became licensed as a Psychologist in California (Psychology License No. PS 9037). He founded Affiliated Counselors & Psychotherapists, an entity providing counseling psychotherapy services to a broad range of patients at offices in Downey and Pasadena, California. Dr. Antion employs one psychological assistant to assist him in his practice. He leases office space to two other therapists.

From 1994-1997, Dr. Antion was associated with Geriatric Counseling, Inc, providing counseling and psychotherapy to patients of a locked care facility.

Dr. Antion is a member of the American Psychological Association, the California Psychological Association, and the American Association of Psychological Counselors. He is included in *Who's Who in the West*.

Dr. Antion regularly attends continuing professional education programs. He has given lectures and speeches on radio and television. He has provided stress management seminars to Rockwell International, Inc.

Dr. Antion has published several video and audiotape courses which were marketed through International Bible Learning Center and Gateways, Inc.

Dr. Antion is married. He and his wife live in Pasadena, California.

Dr. Antion's License History

7. On January 9, 1978, the Board of Behavioral Sciences, Department of Consumer Affairs, State of California, issued Marriage and Family Therapist License No. MFC No. 12090 to David Lee Antion. MFC No. 12090 expired on February 1, 2001, due to non-payment of renewal fees, but was renewed on May 2, 2001. That license is valid and expires on January 31, 2005.

There is no history of any administrative discipline having been imposed against MFC No. 12090.

8. On July 29, 1985, the Board of Psychology, Department of Consumer Affairs, State of California (the Board) issued Psychologist's License No. PSY 0937 to David Lee Antion, Ph.D. That license is valid and is renewed through May 31, 2005.

There is no history of any administrative discipline having been imposed against Psychologist's License No. PSY 0937.

The Nature of Dr. Antion's Practice

9. Dr. Antion sees a wide variety of patients, including couples, persons in difficult relationships, persons with stress issues, adults and adolescents.

Dr. Antion provides patients with an "Orientation to Psychological/Behavioral Care," a one page written document. That document states, in part:

"We refer to our philosophy of treatment as *solution-focused*. This means that our approach assumes you have the strength, inner resources, or solutions to deal with the problems you are facing. Our goal is to identify those solutions with you based on careful examination of current and past methods of resolving the challenges you have encountered. In order to help you assess the strengths and resources which you have, your therapist will ask you to be actively involved in your own therapeutic process. This means that you might be asked to:

- Use some kind of writing exercise to help you keep track of some of the behaviors . . .
- Purchase specified books which will educate you about your problem.
- Perform exercises on your own (such as relaxation exercises, thought-stopping exercises, etc.).
- Consult your primary care physician or psychiatrist for a medical evaluation.

- Refrain from certain activities that are intensifying your problems.
- Attend meetings in the community (either professionally or peer-led) . . .
- Begin a program of exercise.
- Improve your nutritional intake by making a slight change in your diet . . .

In other words, this approach to treatment asks you to be active between sessions in trying certain ways to change maladaptive behaviors and attitudes. This psychotherapist does not 'fix' you, the passive receiver of help, but instead facilitates and guides your process of change.

If solving your problems seems difficult or even overwhelming right now, remember that our therapist will understand this and will take all of your hopes and fears into consideration. It is vital that you be honest about your thoughts and feelings at all times. Please be aware that some discomfort and awkwardness is a normal response to talking about problems and that these feelings will subside. You will be working with a trained professional, and you need not fear being judged or criticized. Speak freely and openly in this confidential relationship."

Dr. Antion described his therapeutic orientation as follows: "I do more cognitive and humanistic therapy." He utilizes "supportive psychotherapy" and "reality therapy."

10. Dr. Antion has provided professional services to more than 100 teenage girls over his career. He testified he never had a patient complaint.

Dr. Antion's Treatment of Patient CDM

11. In December 2001, GD, a Registered Nurse, concluded her family, and particularly CDM, her 18 year old daughter, would benefit from psychotherapy. GD's ex-husband (who was CDM's father) was dying of cirrhosis of the liver. GD believed CDM was suffering from "feelings of hopelessness" and "anger issues." GD was not aware of CDM having any "boy problems."

GD consulted the Yellow Pages to find a licensed psychologist whose practice was located near her home and work. She saw Dr. Antion's advertisement. She telephoned Dr. Antion's office, spoke with him briefly, determined he was a Christian, and concluded Dr. Antion could help CDM. Arrangements were made for Dr. Antion to meet with the family at the first convenient opportunity.

12. CDM wanted to visit with another therapist, but agreed see Dr. Antion.

The First Visit

13. On December 6, 2001, GD, CDM and CDM's younger brother traveled to Dr. Antion's office in Downey. CDM's older sister did not accompany them.

While the family was in the patient waiting room, GD completed New Patient Information form and a Patient Treatment and Medical History form. GD reviewed and signed the patient orientation form, a treatment consent form, and a financial agreement.

In the Patient Treatment and Medical History form she completed, GD indicated CDM had "feelings of hopelessness, etc." about "the upcoming death of my ex-husband as he is dying of cirrhosis of the liver." She indicated the family sought counseling in 1989-1999 "to come with issues brought on by my ex-husband."

14. Dr. Antion greeted the family and brought them back to his private office. He met with the family for approximately 30 minutes, and then met privately with CDM for about 15 minutes. Dr. Antion testified he wanted to make certain CDM was comfortable with him and to establish rapport. Dr. Antion wanted to gain some idea of the issues that were troubling CDM.

Dr. Antion recalled telling CDM in this first session that he was married and that "You're old enough to be my granddaughter . . . you are a pretty girl." Dr. Antion said he did not make this comment in a flirtatious fashion.

15. Dr. Antion prepared the following chart note after the December 6, 2001 visit:

"Affect/Appearance: Teenage girl (15). Overweight, unhealthy body appearance predictive of future health problems and diabetes. Serious demeanor, accompanied by the mother and siblings. Dressed in jeans and casual attire with tennis shoes.

Content: Intake, introduction and background, feelings of hopelessness, some family dynamics, mother's introductions, insurance problems – will they pay?

Significant Events: Mother's ex-husband is dying of cancer from cirrhosis of the liver, establish therapeutic rapport.

Suicide: no **Homicide:** no

Next Appt.: Will call after they find out whether covered by insurance here."

16. Dr. Antion did *not* develop a written Treatment Plan following this visit.

17. Dr. Antion's office sent a health insurance claim form to PacifiCare indicating GD was seen on December 6, 2001, with a DSM-IV Axis I diagnosis of 300.02 (Generalized Anxiety Disorder). The charge for that session was \$150.

Scheduling the Second Appointment

18. On December 20, 2001, GD called and advised Dr. Antion that PacifiCare would allow up to 21 visits a year. GD said she wanted Dr. Antion to schedule an

appointment for her daughter as soon as convenient. Dr. Antion said it was a busy time of the year, but he would work to get her an appointment.

19. On January 8, 2002, GD called again. Dr. Antion had the impression GD believed it was very urgent for CDM to see him as soon as possible. GD said there was insurance coverage. Dr. Antion advised GD that he would call her back.

20. On January 22, 2002, CDM telephoned the office and spoke with Dr. Antion. They agreed to meet on January 31, 2002.

The Second Visit:

21. Dr. Antion prepared the following chart note after the January 31, 2002 visit:

"Affect/Appearance: 15 yr-old girl. Seemed happy to be here but underneath lay a depressed mood, feels her mother gives more attention to her brother than to her, feels mother is suspicious of her and thinks she's going to have sex a lot and get pregnant because the mother did when she was young.

Content: Her friends, family, relationship with mother, boy friends, sitting around somebody's house just 'kickin' it.' Mother's suspicions, she cannot talk well with mother.

Significant Events: Appearance is overweight, barrel upper body and abdomen predictive of further health problems.

Suicide: no **Homicide:** no

Assignment: Eat properly and stay away from junk food as much as possible.

Next session: In two weeks: Feb. 13, 2002."

22. According to CDM, she did not tell Dr. Antion about any previous sexual encounters during this visit. The topic of sex was discussed, however. GD recalled Dr. Antion telling her she was beautiful, but she could not recall what else was covered.

According to Dr. Antion, CDM said she had engaged in sexual intercourse during this session. However, he failed to include that information in his chart note.

23. In an interview with Investigator Maria Mudge (Investigator Mudge) taking place on October 22, 2002, Dr. Antion recalled he engaged in "some supportive counseling" and "I did some reality, you know, just asking her what she wanted and what she was going to do, and if what she was doing was going to get her what she wants, some health psychology . . ."

24. Dr. Antion did *not* develop a written Treatment Plan following this visit.

The Third Visit

25. The events occurring on the third visit – February 13, 2002. – gave rise to the patient complaint and formed the basis of most allegations set forth in the Accusation.

26. CDM was taken to Dr. Antion's office by her grandmother. When she entered the office, she recalled Dr. Antion shooing a patient out of his office as he greeted her.

CDM accompanied Dr. Antion back to his office. He closed the door. CDM took a seat on the patient couch. Dr. Antion sat across from her in a straight back chair that was "a conversational distance" away.

The following matters were essentially undisputed.

CDM said she had snuck out of her house to date a 19-year-old man. She deceived her mother in order to do so. CDM was grounded at the time. The 19-year-old man took CDM up to his room and locked the bedroom door. They sat on the bed. CDM was concerned that he would want to have sex. The young man began kissing her and took their clothes off. CDM and the young man had sexual intercourse. It was very painful. CDM bled after intercourse.

CDM was quite emotional when telling this story. Dr. Antion was sympathetic. He held out his arms and asked, "Do you want . . ." CDM nodded her head and received a hug. CDM began crying.

Dr. Antion sat down on the couch next to CDM. He was in very close physical proximity to her. He put his arm around CDM's shoulder. Dr. Antion kissed CDM at least twice on the forehead. He reached across CDM to grab some Kleenex, after which he dried her tears. He stroked her hair.

Dr. Antion tried to comfort CDM as he was holding her. Among other things, he said, "It's not your fault. Everything will be OK. Go ahead and cry. It's OK to cry. You're a good girl." Dr. Antion told CDM that what the young man had done was similar to rape.

27. According to Dr. Antion, he was very concerned that CDM would form the mistaken impression that her recent, unhappy sexual experience was how her sex life was always going to be. Dr. Antion did not want to leave that mistaken impression.

28. According to CDM, Dr. Antion's conduct made her feel confused, nervous, and uncomfortable. She was not sure if she needed physical comforting. She didn't know if she needed to protect herself. She didn't think it was right for a professional to hug and kiss her. CDM did not tell Dr. Antion to stop, but she did look around the office for a weapon and an escape route.

29. At some point, Dr. Antion left the couch and returned to his chair. Dr. Antion then made an effort to counsel CDM concerning teenagers and sexual relationships.

30. While there is some dispute about what exactly was said, it is without dispute that the following matters were disclosed by Dr. Antion to CDM:

- Dr. Antion's son had sex when he was a teenager and it was not satisfying.
- Dr. Antion married a virgin and it took them about six months before sex was not painful for her.
- Dr. Antion kissed, fondled and hugged his wife all over to get her aroused before sex.
- On one occasion before they were married, Dr. Antion accidentally ejaculated in his pants when his wife aroused him.
- Dr. Antion always felt badly when his wife did not achieve an orgasm during sexual intercourse.

31. While there is some dispute about what exactly was said, Dr. Antion certainly provided the following opinions and advice:

- CDM's recent sexual experience was very much like rape.
- Teenage sex was generally not very satisfying because it was hurried and there was guilt associated with it.
- There were good young men in the world, but CDM had to look for them.
- As young men become older, they gain more sexual self-control.

32. Dr. Antion did not kiss CDM on the lips and he did not stroke her thigh or legs. Dr. Antion did not touch any intimate part. Dr. Antion did not ask to meet CDM outside of therapy. Dr. Antion did extend the session by 10 or 15 minutes.

33. Dr. Antion prepared the following chart note after the February 13, 2002 visit:

"Affect/Appearance: Mother dropped her off and she was alone in the waiting room. Saw her in waiting room – face had flat affect, far away stare, burdened look. When greeted she put on a smile and came into office gingerly. Depressed mood. Feelings of revulsion.

Content: Her dating, sneaking out so Mom didn't know and dating 19 year old man, sex with 19-yr-old, her feelings, hurts, she bled, embarrassment, told sister, had sex before this.

Significant Event: Pt. dated 19 yr-old who took her to his home when his parents were gone. She wondered what would happen and had feeling they would have sex. Young man took her to his bedroom and locked the door so his brother wouldn't come in. She said she thought he's going to want sex. She lay on bed, he began to

kiss her and took his and her clothes off. He had sex and she said it hurt so much that she bled which was very embarrassing.

Supportive therapy, educative, relationship skills, nurturing. Pt. broke down in tears had forlorn look and felt bad and disgusted with self. I asked her if she wanted a hug and said she did. I moved from chair to couch and held her. She cried on my shoulder. I got tissue and helped her dry tears. Told her she was a good and pretty girl and that she will get over this and move on. She would some day meet the right young man for her but this man wasn't it as he was selfish and didn't care about her. She was virtually raped.

Explained that considerate lover would have self control and put her needs first and he would ask her to find out her feelings each step of the way.

Moved back to my chair and asked if she were all right. Said she would make a wonderful daughter. Walked her to desk with arm around her shoulder and asked if she wanted me to make another appointment in to weeks. She agreed. As she left her mood seemed better and more optimistic.

Suicide: no Homicide: no

Next appt.: Feb. 27, 2002."

34. Dr. Antion provided the following information to the insurance company concerning this session.³

"Observations/appearance/affect: Mother dropped her off [and she was alone in the waiting room.] **She was in waiting room looking scared. There was another man (autistic and unkempt) also in the waiting room.** [Saw her in waiting room -] **Her** face had flat affect, far away stare, burdened look. When greeted she put on a smile and came into office gingerly. Depressed mood. Feelings of revulsion.

Content/topics: Her dating, sneaking out so Mom didn't know and dating 19 year old man, sex with 19-yr-old, her feelings, hurts, **her embarrassment because of bleeding during sex, she told sister about it** [had sex before this].

Significant Event: Pt. dated 19 yr-old who took her to his home when his parents were gone. She wondered what would happen and had feeling they would have sex. Young man took her to his bedroom and locked the door so his brother wouldn't come in. She said she thought he's going to want sex. She lay on bed, he began to

³ Where additional information was provided in the body of the report, it has been printed in bold. Where information contained in the chart note was not provided to the insurance company in the body of the report, it has been placed in [brackets].

kiss her and took his and her clothes off. He had sex and she said it hurt so much that she bled which was very embarrassing.

Legal Issues: What happened to [CDM] is very possibly statutory rape. As I recall it is statutory rape when a 19 yr-old has sex with a 15 yr-old. But it is not child abuse or child molestation because of the closeness of their ages. Therefore, confidentiality may have to be maintained. Will check with legal at CAMFT or CPA.

Therapy: Supportive therapy, educative, relationship skills, **authoritative** nurturing.

[Pt. broke down in tears had forlorn look and felt bad and disgusted with self. I asked her if she wanted a hug and said she did. I moved from chair to couch and held her. She cried on my shoulder. I got tissue and helped her dry tears. Told her she was a good and pretty girl and that she will get over this and move on. She would some day meet the right young man for her but this man wasn't it as he was selfish and didn't care about her. She was virtually raped.]

Explained that considerate lover would have self control and put her needs first and he would ask her to find out her feelings each step of the way.

Moved back to my chair and asked if she were all right. Said she would make a wonderful daughter. Walked her to desk with arm around her shoulder and asked if she wanted me to make another appointment in to weeks. She agreed. As she left her mood seemed better and more optimistic.]

Suicide: no **Homicide:** no

Diagnosis: 296.22; 300.02

Treatment Plan: Same x Replace

Next appt.: In 2 weeks – 2/27/02 [Feb. 27, 2002].”

35. Dr. Antion did *not* have a written Treatment Plan at the time of this visit.

36. Dr. Antion's written treatment plan was dated February 19, 2002, six days *after* his last visit with CDM and the very day on which he received a telephone call from Detective Price of the Downey Police Department in which arrangements were made to meet the following day.

37. Dr. Antion's written treatment plan indicated major presenting problems of “Anxiety/Depression,” “Relationship/Family Problems,” and “Health Problems.”

The treatment plan set forth a DSM-IV Axis I diagnostic code of V 61.20 (Parent Child Relational Problems) and 296.21 (Major Depressive Disorder, Single Episode). The treatment plan did not include a diagnosis of Anxiety.

The "problem-focused/goal oriented treatment plan" set forth goals of reconciling the parent child relationship with family therapy and reducing depression with cognitive/supportive/RET therapy.

Dr. Antion signed the treatment form, but no signature appeared on the "Patient/Legal Guardian Signature" line.

CDM's Reaction

38. After the session ended, CDM left the office and went to the parking lot, where her grandmother was waiting in the car. Her grandmother scolded CDM for being late, saying CDM "had taken too long." CDM told her grandmother she did not want to see Dr. Antion again. CDM felt "dirty and nasty."

39. Later that day, CDM told her mother she wanted a new therapist because Dr. Antion "talked too much."

40. Even later that day, CDM spoke with her older sister, ADM, while they were providing services at their church. CDM told ADM what had happened and that she needed a "second opinion." ADM was outraged. ADM told CDM, "If you don't tell Mom, I will."

41. CDM told her mother about the last session, indicating Dr. Antion "always talked about sex" and that he had discussed his own sex life in the session. CDM said Dr. Antion sat next to her on the couch, stroked her hair, and told her how beautiful she was.

CDM did *not* tell her mother that CDM brought up the topic of sex, *nor* did she tell her mother about the sexual encounter involving the 19-year-old man.

42. Two days later, on February 15, 2002, GD took her daughter to the Downey Police Department. A statement was taken.

43. On February 20, 2002, Dr. Antion met with Detective Price of the Downey Police Department. In the course of their discussion, Dr. Antion said he asked CDM if she wanted a hug, and she said yes, after which they hugged; he said he kissed her one time on the forehead; he said that he had mentioned to CDM that his wife was a virgin when they married and it took her six months before they could have sex without his wife having pain; he said he was trying to make the point that CDM needed to find a boyfriend who would be patient and not demand sex if it hurt; he said he did remember if he touched CDM's leg.

Dr. Antion told Detective Price it was "perfectly acceptable for a psychologist to hug a patient as long as they are asked and they say it was ok." Dr. Antion told Detective Price he never did anything with CDM in a sexual manner.

44. There was no criminal prosecution.

45. On March 15, 2002, CDM (through her mother) filed a consumer complaint with the Board. The body of the complaint was in CDM's handwriting, although GD signed the form. The complaint set forth CDM's recollection of the events occurring during therapy. Most of those matters are set forth in Factual Findings 30 and 31. There were some additional matters alleged. It is noteworthy that CDM did *not* mention her sexual encounter with the 19-year-old man, but simply referred to "a boy in my life who hurt my feelings."

46. The Board investigated. An investigator obtained statements from CDM and ADM on August 16, 2002. The investigator interviewed Dr. Antion on October 22, 2002.

Dr. Antion was represented by counsel in the Board interview. He admitted those matters set forth in Factual Findings 26, 27 and 29-32.

Dr. Antion provided the following explanations concerning the last therapy session. He said he was attempting "to nurture her. I tried to let her have a catharsis. I wanted her to just drain it all away, let her know she was okay, she was a good girl, she was a fine girl, she was a pretty girl, and that things would be better in the future. That is what I wanted."

According to Dr. Antion, "Well, she was in a great deal of distress, and I wanted her to be able to . . . first of all, I wanted her to have a catharsis, second of all, I wanted her to be able to feel like somebody was on her side, that she was not a bad or evil or a person of revulsion. I think she had negative self-images . . ."

When asked if customarily kissed patients, Dr. Antion said:

"No. It is not customary for me, but this was a girl that I felt more fatherly toward. She is just a young girl. She didn't have a father. No man in her life that I knew of that was an older man that was nonsexual with her. That was how I felt - it was probably a spontaneous and caring thing. That is what I felt sincerely."

When asked if he routinely self-disclosed sexual matters, he said:

"It is not something I routinely, customarily discuss with anybody of any age, but in this case, this girl had a very bad experience. I wanted to assure her that there were brighter days ahead. There are people out there that would be good to her and that she could find somebody if she looked for the right person."

When asked if he made referred to the problems of unidentified patient, Dr. Antion said he did:

"I might call them some other name, and say here is example of somebody that had problem like this. Here is a situation which came about. Here is how it was resolved. Sometimes I would even say . . . you remind me of a person who had a problem like this, and they went through this, and they came out on the other end, to give that patient hope. To give the present patient hope that they can do it too. If somebody else did it, they could do it . . ."

Dr. Antion described his motives as follows:

"The woman was in crisis. The young girl was in crisis. Obviously we had built a very good rapport, and she trusted me. She trusted me a lot or she would not have brought up a very delicate and a very embarrassing situation which she felt she could tell me absolutely in confidence and that I would understand and be a part of her situation and that she could rely on me. I wanted for her to have a catharsis to nurture her, to care for her, and to make sure she did not go away with the wrong cognitive impressions or subconscious impressions of what life was going to be about or what sex should be about or how men should be. I really wanted that to happen for her so that she would not leave here with a false impression . . ."

When asked to explain why he kissed and comforted CDM, Dr. Antion said:

"I think the crisis this girl was in, the feelings of revulsion she had, the look on her face, the tears that flushed out and the hurt that she had experienced. I just did not want her to go out there feeling that this was the way life was."

Relevant Standards of Care

47. The "standard of care" requires licensed psychologists to exercise that degree of skill, knowledge and care ordinarily possessed and exercised by reputable members of the profession under the same or similar circumstances. The existence and nature of a standard of care is a matter peculiarly within the knowledge of experts; it presents a basic issue which can only be established by expert testimony.⁴ Because what occurs in psychotherapy is unscripted and unique, the context in which things are done and said is of great importance.

48. Each party called an expert witness to establish relevant standards of care and to provide opinions concerning Dr. Antion's adherence to or departure from them.

⁴ See, *Williams v. Prida* (1999) 75 Cal.App.4th 1417, 1424; see, also, *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal. 4th 992, 1001.

The Experts

49. Complainant's Expert – Alan Michael Karbelnig, Ph.D. (Dr. Karbelnig):

Dr. Karbelnig received a Bachelor of Arts in Psychology from UCLA in 1979; a Master of Science in Counseling Psychology from USC in 1981; a Ph.D. in Counseling Psychology from USC in 1986; and, a Ph.D. in Psychoanalytic Training from Southern California Psychoanalytic Institute in 1996.

Dr. Karbelnig is licensed as a psychologist with the Board, and holds an MFT issued by the Board of Behavioral Science Examiners.

Dr. Karbelnig was a staff psychologist at Bloch Medical Center from 1981-1985; a staff psychologist with Warren L. Jones & Associates from 1985-1989; a staff psychologist with Open Paths Community Counseling Center from 1979-1990; an Adjunct Professor of Psychology at the Fuller Graduate School of Psychology, Fuller Theological Seminary, from 1990-1992; a co-director and psychologist at Fair Oaks Psychological Associates from 1989-1994; a faculty member at Southern California Psychoanalytic Institute from 1996 through the present; and, a practicing psychologist and psychoanalyst from 1988 to the present.

Dr. Karbelnig is a member of the American Psychological Association, the Southern California Psychoanalytic Institute, the Southern California Psychoanalytic Society, the American Psychoanalytic Association, the California Psychological Association, the San Gabriel Valley Psychological Association, and the Society for Personality Assessment.

Dr. Karbelnig was the Chairman of the San Gabriel Valley Psychological Association Ethics Committee. He has served as an expert witness for both the Board of Psychology and for the Board of Behavioral Science Examiners. Dr. Karbelnig has written several articles in *The California Psychologist*, a publication of the California Psychological Association.

50. Respondent's Expert – Martin H. Williams, Ph.D. (Dr. Williams):

Dr. Williams received a Bachelor of Arts in Psychology from UCLA in 1968 and a Ph.D. in Psychology from the University of California, Berkeley 1975.

Dr. Williams is licensed as a psychologist with the Board. He is also a certified sex therapist with the American Association of Sex Educators, Counselors and Therapists, and an approved non-resident consultant in Nevada.

Dr. Williams was a pre-doctoral fellow at UC Berkeley from 1968-1979; a pre-doctoral psychology intern at the VA Hospital in Palo Alto from 1970-1971; a pre-doctoral trainee in psychology at UC Berkeley from 1971-1972; a psychological assistant and clinical psychologist in private practice in Berkeley from 1973-1980; a Peer Review Chair at Kaiser-Permanente Medical Center in Santa Clara from 1983-1987 and 1988-1995; on the Kaiser-Permanente staff as a clinical psychologist from 1980 to the present; and, in private practice

in psychotherapy and forensic psychology from 1985 to the present. He is an ex-officio member of the Board of Directors of Psychologists in Independent Practices.

Dr. Williams is a member of the American College of Forensic Psychology, the Ethics Task Force of the Division of Independent Practice of the American Psychological Association, the American Psychological Association, and the California and Santa Clara County Psychological Associations. He was a secretary (1978-1979) for the Society for the Scientific Study of Sex, and is an associate member of the California Association of Marriage and Family Therapists.

Dr. Williams has published numerous articles, many in peer-reviewed professional journals.

51. Each expert witness reviewed essentially the same materials to reach his opinions and conclusions. These materials included the patient complaint, various law enforcement reports, the Board's interview of Dr. Antion, and Dr. Antion's patient records. Neither expert witness interviewed CDM or Dr. Antion. Each expert witness prepared a written report.

52. Dr. Karbelnig's Opinions and Conclusions:

A. Dr. Karbelnig originally believed Dr. Antion engaged in an extreme departure from the standard of care (gross negligence) related to patient confidentiality by discussing the contents of his therapy sessions with Detective Price. Dr. Karbelnig later determined he was absolutely mistaken in reaching this conclusion. Dr. Karbelnig frankly admitted this mistake in his testimony.

B. Dr. Karbelnig believed Dr. Antion's treatment of CDM constituted a slight deviation from the standard of care (mere negligence) because his therapeutic role was pretty much limited to being a caring, supportive, adult male figure. Dr. Karbelnig could not determine any psychotherapeutic approach that was being undertaken. He was unable to determine what Dr. Antion was trying to accomplish in therapy, other than being supportive and caring, or how Dr. Antion was trying to accomplish whatever his objective might have been. In this regard, Dr. Karbelnig testified, "It [the treatment] was inadequate in terms of the interventions."

Dr. Karbelnig acknowledged that empathy, reassurance, education, and the offering of advice are recognized psychotherapeutic techniques.

C. Dr. Karbelnig testified Dr. Antion's physical touching of CDM, taken in its entirety, was inappropriate and constituted an extreme departure from the standard of care (gross negligence).

In reaching this opinion, Dr. Karbelnig was asked to assume that only the physical touching Dr. Antion described in his interview with Investigator Mudge occurred,

and to disregard any additional touching described by CDM. Thus, the circumstances surrounding the physical touching included Dr. Antion initiating the hug, hugging CDM, sitting on the couch in close physical proximity to CDM for several minutes, twice kissing CDM on the forehead or temple, reaching across CDM's body to get some Kleenex, drying her tears and stroking her hair. Dr. Karbelnig also assumed that while Dr. Antion was holding CDM, he told her such things as she was a good girl, it was not her fault, and he would not hurt her.⁵

Dr. Karbelnig testified that existing community standards of care required that unequivocal, non-sexual physical touching be used very carefully. Physical touching is not considered by most practitioners to constitute a valid form of psychotherapeutic intervention, especially where there is a gender difference between therapist and patient and even more so when there is an age difference. The use of unequivocal physical touching is justified only when it is in the patient's best interest.

Dr. Karbelnig believed hugging a well known, long-term patient might be an appropriate gesture of support at the end of a particularly difficult session, but kissing a patient was "pretty much close to never" appropriate for a therapist.

Taken act by act, no a single act of physical touching Dr. Antion engaged in during the February 12, 2002 session constituted an extreme departure from the standard of care considered in isolation, but "the totality of the touches" and the circumstances in which it occurred made Dr. Antion's physical touching of CDM an extreme departure from the standard of care.

On cross-examination, Dr. Karbelnig acknowledged that he did not specialize in the treatment of teenage girls; he admitted he was not aware Dr. Antion's professed orientation was cognitive behavioral therapy; and, he conceded that physical touching could comfort a patient.

D. Dr. Karbelnig testified Dr. Antion's numerous self-disclosures to CDM regarding his own sexual experiences were inappropriate and constituted an extreme departure from the standard of care (gross negligence).

According to Dr. Karbelnig, self-disclosure involves the therapist deliberately telling the patient about some private aspect of the therapist's life. While there is always some level of self-disclosure present in the therapist-patient relationship (for example, the therapist always provides the patient with his or her name; a female therapist may be pregnant; the therapist chooses what patient information to comment upon, which provides

⁵ Dr. Antion's chart note relating to the physical contact stated, "Pt. broke down in tears had forlorn look and felt bad and disgusted with self. I asked her if she wanted a hug and said she did. I moved from chair to couch and held her. She cried on my shoulder. I got tissue and helped her dry tears." No mention was made of the kissing or the stroking of her hair.

Dr. Antion made absolutely no mention of any physical contact in his statement to the insurance company.

the patient with some information about the therapist), the extent to which the therapist legitimately engages in deliberate self-disclosure covers an ethical area in which there is widespread and reasonable professional dispute.

One view is that virtually all forms of therapist self-disclosure should be discouraged. This view is widely held by psychotherapists who engage in psychoanalysis.

Another view is that considerable benefits may arise out of therapist self-disclosure, as it contributes to building rapport, aids to serve the therapist as a model, and provides the patient with concrete, real world examples.

The dangers of self-disclosure include burdening the patient with the therapist's problems, crossing boundaries and reversing the patient-therapist roles. Self-disclosure may even lead to more serious boundary violations such as sexual involvement.

Whatever a psychologist's views on the issue of deliberate self-disclosure might be, Dr. Karbelnig believed that deliberate self-disclosure was within the standard of care only when it was to benefit the patient's treatment. Based upon self-disclosures about which there was little dispute⁶, Dr. Karbelnig concluded Dr. Antion's self-disclosure was not judicious and it was not in the patient's best interest.

To support this conclusion, Dr. Karbelnig pointed out that CDM did not find the self-disclosures illuminating or supportive, but confusing and threatening. Taken together, and coupled with the inappropriate physical touching, Dr. Antion's self-disclosures constituted an extreme departure from the standard of care.

On cross-examination, Dr. Karbelnig conceded that self-disclosure was not the specific subject of any ethical rule he was aware of. He admitted he had never been part of any task force to draft an ethical code. Dr. Karbelnig was firm in his view that Dr. Antion's self-disclosure about his accidental ejaculation was unnecessary to CDM's treatment in any context and was an extreme departure from the standard of care.

E. Dr. Karbelnig believed the evidence did not establish Dr. Antion engaged in sexual misconduct with CDM, although it was a close question. According to Dr. Karbelnig, "It's a close call. It's right on the fence."

⁶ These included: Dr. Antion told CDM she was beautiful; he told CDM she was a good girl; he said his son had sex when he was a teenager and it was not satisfying; Dr. Antion said he married a virgin and it took them about six months to have sex that was not painful for her; Dr. Antion said he kissed, fondled and hugged his wife all over to get her aroused before having sex; on one occasion before they were married, Dr. Antion said he accidentally ejaculated in his pants when his wife aroused him; Dr. Antion said he always felt badly when his wife did not achieve an orgasm during sexual intercourse; Dr. Antion said he believed CDM's recent sexual experience was very much like rape; he said teenage sex was generally not very satisfying because it was hurried and there was guilt associated with it; and, he said as young men become older, they gain more sexual self-control.

F. The following conclusion appeared in Dr. Karbelnig's narrative report, which made a lot of sense:

"In terms of its departure from the standard of care, Dr. Antion's lack of psychotherapeutic competence clearly enters the extreme range primarily due to the sexual implications of his behaviors. Dr. Antion's failure to understand the subjective experience of a vulnerable 15-year-old female sitting alone with him in his office while she responds to his hugs and kisses, hears his stories of ejaculating in his pants, and listens to other details of his sexual life – all activities which he directly admits – reveals incompetence in and of itself. When this insensitivity is combined with the poor technique already described, his professional competence falls into the extreme deviation from the standard of care range."

53. Dr. William's Opinions and Conclusions:

Dr. Williams prefaced his opinions and conclusions with a warning – in making a determination about whether a psychologist complied with the standard of care, hindsight cannot be used. The fact a particular intervention or technique might not have been well received by the patient does not mean there was a deviation from the standard of care. A psychologist's conduct must be judged on the facts and circumstances known and reasonably known at the time of providing services. The practice of psychology must allow for good faith professional error. Psychotherapy is an improvisational endeavor. Psychologists must be permitted to be unsuccessful in the treatment of patients.

A. Appropriately, Dr. Williams was not asked to comment upon Dr. Karbelnig's original but mistaken belief that Dr. Antion engaged in an extreme departure from the standard of care related to patient confidentiality.

B. Dr. Williams believed Dr. Antion's therapeutic treatment of CDM was well within the standard of care in terms of Dr. Antion's psychotherapeutic approach and the therapeutic techniques he utilized. Dr. Williams was "shocked" to hear of Dr. Karbelnig's criticism in this regard, and believed there was no basis for it. He believed Dr. Antion used physical touch, self-disclosure, empathy, and education, all appropriate therapeutic techniques, in a good faith effort to help CDM. CDM's adverse reaction, which was not communicated to Dr. Antion, had nothing to do with Dr. Antion practicing outside the standard of care.

C. Dr. Williams testified Dr. Antion's physical touching of CDM, taken in its entirety, was not inappropriate and did not constitute a departure from the standard of care.

Dr. Williams warned that concluding there was a departure from the standard of care in any matter involving non-sexual contact between a therapist and a patient was dangerous to the many therapists within the profession who engage in non-sexual physical

touching, and unambiguous statutory and ethical prohibitions about touching a patient's intimate parts which make it very clear to therapists what can and cannot do.

Dr. Williams testified non-sexual touching is very common within the profession, a matter various studies have confirmed. According to Dr. Williams, studies have established approximately 40% of psychologists hug their patients. A therapist may use non-sexual touching to comfort or reassure a patient. There is nothing in any ethical code Dr. Williams was familiar with that prohibited non-sexual touching in the course of a therapist-patient relationship.

Dr. Williams noted Dr. Antion gave a hug and a kiss to a 15-year-old girl who was in crisis, "and that's it." He did not believe Dr. Antion departed from any standard of care.

D. Dr. Williams testified there is controversy within the profession concerning self-disclosure. Classical analysts do not engage in self-disclosure because it interferes with the therapeutic mechanism. Psychologists with different therapeutic orientations often use self-disclosure as a therapeutic technique. Dr. Williams noted, "Patients react unpredictably to self-disclosure . . . they can feel special or it can make them uncomfortable."

The main concern about therapist self-disclosure is that it may be used by the therapist to seduce a patient, transforming a therapeutic relationship into a personal relationship. Dr. Williams believed self-disclosure was "a slippery slope." Despite the dangers, Dr. Williams believed self-disclosure was and is commonly used by respected practitioners and because it frequently aids in obtaining desired therapeutic results.

With regard to Dr. Antion's self-disclosures, Dr. Williams characterized them as part of Dr. Antion's sexual education of CDM. Dr. Williams believed Dr. Antion's use of his own personal experiences was an effort to assure CDM "this miserable experience would not represent what would occur in the future." Dr. Antion tried to reassure CDM about her sexual future, not seduce her, so there was no inappropriate self-disclosure.

Dr. Williams believed self-disclosure fell outside the standard of care only when it involved the therapist's sexual intent, and such intent was not evidenced at any point in Dr. Antion's therapy with CDM.

E. Dr. Williams believed the evidence did not establish Dr. Antion engaged in sexual misconduct with CDM. According to Dr. Williams, "The totality of what I know makes it look like sexual education rather than sexual misconduct . . . I completely disagree that what he did was unreasonable or was not prudent. His conduct was absolutely consistent with the standard of care . . . Everything I have heard is well explained to help the young girl."

The fact the last session was a "therapeutic flop" was not the standard by which Dr. Antion's conduct should be measured, according to Dr. Williams. This was true even though risk-management principles would likely not endorse the use of physical touch and the use of self-disclosure as occurred in the last session. As Dr. Williams pointed out, risk management principles are designed to reduce patient complaints and claims, not to assist patients in psychotherapy.

F. The following insight appeared in Dr. Williams' narrative report, which made a lot of sense:

"That Dr. Antion's actions were misunderstood does not mean that they were wrong. In psychotherapy, we often work with patients who misunderstand our actions, sometimes becoming angry at us. Fortunately, in many cases, these misunderstandings are resolved with further treatment. In some cases, though, the misunderstandings are insurmountable and lead to premature termination of treatment or, as in the present unfortunate case, a complaint to outside authorities."

Dr. Williams acknowledged that taken out of context and in hindsight, Dr. Antion's conduct appeared "incredibly stupid and ill conceived."

Dr. Antion's Testimony and Other Evidence

54. Dr. Antion provides about 25-30 patient hours of psychotherapy per week. He usually sees couples, although he also sees many adults individually in sessions.

55. Dr. Antion mentioned he utilizes "supportive psychotherapy," "reality therapy," "cognitive therapy" and "humanistic therapy."

Based on his testimony, "supportive psychotherapy" appears to include techniques such as praise, encouragement, reassurance, advice, instruction, and education. It involves deliberate efforts to enhance the therapist-patient relationship, minimize anxiety and promote the patient's self-esteem.

Based on his testimony, "reality therapy" appears to involve the therapist teaching the patient ways to control the world and how to better meet personal needs. The therapist helps the patient to identify and confront what he or she is doing, to evaluate behaviors, and to assist the patient in becoming more effective in meeting his or her needs.

Dr. Antion also mentioned using "RET" (rational emotive therapy), a behaviorally oriented cognitive therapy.

56. Dr. Antion said he used self-disclosure to assist patients in relating to him. According to Dr. Antion, the use of self-disclosure was always "a judgment call." He now is far more hesitant to use self-disclosure because he believes it might be easily misinterpreted.

Dr. Antion used physical touch to comfort or encourage a patient from time to time because "sometimes words fail." He hugged patients as a part of his practice on rare occasions, but only when he first gained the patient's permission. Dr. Antion was not aware of any potentially harmful effects from non-sexual touching.

At the time of his sessions with CDM, Dr. Antion perceived he did nothing wrong by sitting on the couch with CDM for 10 minutes while she was crying, kissing her, hugging her, or stroking her; but, he testified he would now "never get out of my chair." Dr. Antion believed such conduct was too risky.

57. Dr. Antion was not aware of any hard and fast rules concerning non-sexual touching or self-disclosure.

58. Dr. Antion testified he was not aware of any other patient complaints. He has never had a sexual relationship with a patient. He testified he harbored absolutely no sexual intent in providing therapeutic services to CDM.

59. Dr. Antion was stunned by CDM's complaint. He was distressed by his interview with the police and by the disciplinary actions filed against him.

Since the incident involving CDM, Dr. Antion has engaged in far less physical touching and self-disclosure.

60. Lynn Jurasky-Patapoff (Patapoff) is Dr. Antion's psychological assistant. She is presently enrolled in a doctoral program in clinical psychology at the California School of Professional Psychology. Patapoff works at Dr. Antion's office in Downey three nights a week. She regularly meets with Dr. Antion to discuss patient issues and treatment. Patapoff testified Dr. Antion is a good supervisor and is quite knowledgeable.

Patapoff has never seen or heard of Dr. Antion engaging in any sexually inappropriate behavior. She described Dr. Antion as "kind and fatherly" and sensitive.

Patapoff was totally unaware of what Dr. Antion said to CDM during the course of psychotherapy.

61. Acel Johnston (Johnston) is a licensed marriage and family therapist. Dr. Antion became Johnston's supervisor in 1986 and worked with Johnston through 1992.

Johnston testified Dr. Antion was a highly competent, effective, knowledgeable and ethical psychotherapist. Johnston described Dr. Antion as being very honest and forthright.

Johnston had not had contact with Dr. Antion since 1992.

62. Les Stocker (Stocker) has known Dr. Antion personally and professionally for 15 years. Stocker and his family get together with Dr. Antion and his family several times a year. Stocker is the President of the Braille Institute of America.

Stocker testified Dr. Antion possess the utmost integrity, is honest, is totally committed to Christianity, is not a womanizer, interacts well with teens, and has an avuncular bearing.

Stocker found out about the charges against Dr. Antion about a month before the disciplinary hearing. Dr. Antion told Stocker he provided services to a young woman who became emotional and that he hugged her as she was weeping. Dr. Antion did not mention any self-disclosure.

Witness Credibility

63. CDM was a sympathetic witness. She was clearly upset about what occurred in the psychotherapy session on February 15, 2002. CDM was confused and troubled immediately after that session. She immediately sought counsel from her older sister, spoke with her mother, reported Dr. Antion to the police, and helped file a consumer complaint.

However, CDM was untruthful in her testimony when she claimed she told her mother about her sexual experience with the 19-year-old man. This intentional dishonesty raised some questions about other parts of her testimony, such as her claim that Dr. Antion stroked her thigh and whispered in her ear. All of those portions of CDM's testimony that were corroborated by Dr. Antion were accepted as true and form the factual findings herein.

It was not established that CDM suffered any harm as a result of Dr. Antion's unprofessional conduct, either through her testimony, the testimony of others, or the unsupported inferences which might be drawn.

A question was raised about whether GD would have had her daughter report the incident to the police and to the Board had GD known that CDM raised the topic of sex during psychotherapy and had GD known that CDM had engaged in sexual intercourse with a 19-year-old man. GD's state of mind had nothing to do with how CDM was treated by Dr. Antion in psychotherapy.

Dr. Karbelnig and Dr. Williams were highly trained, well qualified expert witnesses. Each based his opinion on essentially the same material. Dr. Karbelnig frankly admitted his original mistaken opinion concerning the confidentiality issue, an error that had very little to do with the validity of his opinions on the remaining issues.

Dr. Karbelnig tended to focus on what was expected of a reasonable and prudent psychologist under the same or similar circumstances as those shown by the evidence, which was an objective standard of care. According to Dr. Karbelnig, Dr. Antion engaged in gross negligence in two areas: he engaged in inappropriate physical touching and inappropriate

self-disclosure. Dr. Karbelnig believed Dr. Antion's objective conduct taken in context and in its entirety –what he did and what he said - was well outside the bounds of care expected of a reasonable and prudent psychotherapist providing psychotherapy to a 15-year-old girl who was distressed as a result of a recent, unhappy sexual experience.

Dr. Williams focused on the improvisational nature of psychotherapy, the need for trial and error, and the need to rely on the good faith intentions of the professional providing psychotherapy, which was a subjective standard of care. Dr. Williams believed Dr. Antion's intent and motivation was to help his patient, the thought Dr. Antion offered reasonable therapeutic explanations for all his conduct and comments, and thus Dr. Williams could not conclude that anything Dr. Antion said or did constituted even a slight deviation from the standard of care. This conclusion was valid even though CDM could have taken Dr. Antion's conduct and comments the wrong way and even though there was an unexpected and perhaps an undesirable therapeutic result.

Dr. Antion was sincere. Dr. Antion did not present as a sexual predator, and the objective evidence did not suggest he was or is a sexual predator. Dr. Antion had no real appreciation for how he came across to a 15-year-old female patient by hugging, kissing and telling her about his own sexual experiences.

Dr. Antion was overcome by fatherly feelings toward CDM ("It was probably a spontaneous and caring thing) causing him to hug, kiss and stroke her hair. CDM's bad experience with the 19-year-old man caused Dr. Antion to disclose sexual matters which he customarily did not discuss with anybody in therapy. Dr. Antion still does not realize how his conduct and comments might have been misperceived, a blind spot that is of concern. While Dr. Antion has modified his objectionable behavior, he testified he has done so for risk management reasons and not because patient care requires such changes.

Some questions about Dr. Antion's credibility were raised by reason of the late date on which he prepared his written treatment plan, the information not provided to the insurance company that included in the final chart note, and some information that was not included in the chart note which admitted in the Board interview. The fact that Dr. Antion freely admitted so much potentially detrimental material boosted his credibility and made it difficult to believe he was intentionally deceitful.

The character witnesses were all very supportive of Dr. Antion. But, Dr. Antion had not disclosed to any of these character witnesses what it was he had disclosed to his patient during therapy. Without this information, the testimony of these persons concerning Dr. Antion's competence was incomplete.

Dr. Antion and the Standard of Care

64. *Sexual Misconduct*: Under Business and Professions Code section 726, the commission of any act of sexual abuse, misconduct, or relations with a patient constitutes unprofessional conduct and grounds for disciplinary action. Under Business and Professions

Code section 2960, "unprofessional conduct" includes "Any act of sexual abuse, or sexual relations with a patient . . . or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist . . ."

The objective conduct in which Dr. Antion engaged during his sessions with CDM did not rise to the level of "sexual misconduct." No expert testimony supported such a conclusion and a reasonable, ordinary lay person would not interpret his conduct to clearly establish sexual misconduct, although it certainly raised some questions.

65. Repeated Negligent Acts: "Negligence" is conduct falling below the standard of care. The standard of care varies in different situations, but the standard of conduct expected of a licensed psychologist remains constant, i.e., the exercise of due care commensurate with the risk posed taking into consideration all relevant circumstances.

In connection with the February 15, 2002 psychotherapy session, Dr. Antion engaged in repeated acts of negligence. An ordinary, reasonable and prudent male psychotherapist would not have initiated a hug with a distraught 15-year-old female patient, and would not have kissed and hugged that patient and stroked her hair while sitting on a couch next to the patient. This inappropriate physical contact constituted a negligent act.

Separate from the inappropriate physical contact was the self-disclosure. An ordinary, reasonable and prudent male psychotherapist would not disclose to a distraught 15-year-old female patient his son had sex when he was a teenager and it was not satisfying, he married a virgin and it took his wife about six months before sex was not painful, he kisses, fondles and hugs his wife all over to get her aroused before sex, on one occasion he accidentally ejaculated in his pants, and he always feels badly when his wife does not achieve an orgasm during sexual intercourse. This inappropriate self-disclosure constituted an independent negligent act

66. Gross Negligence: "Gross negligence" is the want of even scant care or an extreme departure from the ordinary standard of conduct.

Negligence and gross negligence should not be measured by unexpected or adverse therapeutic results; nor should negligence and gross negligence be measured by the proclaimed therapeutic intent of the professional providing psychotherapy.

Instead of evaluating negligence by subjective intent and ultimate outcomes, the standard of care must be measured by what reasonable and prudent psychologists would or would not do under the same or similar circumstances as those shown by the evidence.

When the situation is stripped of intentions and reactions, the following factual question is presented:

Would a reasonable and prudent licensed male psychologist in his late 50's who is treating a 15-year-old female diagnosed with depression and anxiety, who expresses distress

over a recent sexual experience, offer a hug and then hug, kiss and comfort the patient while sitting on a couch next to her, then disclose to her, among other things, that his son had sex when he was a teenager and it was not satisfying, he married a virgin and it took he and his wife about six months before sex was not painful for her, he kisses, fondles and hugs his wife all over to get her aroused before sex, on one occasion before they were married, he accidentally ejaculated in his pants when he was aroused, and he always feels badly when his wife does not achieve an orgasm during sexual intercourse?

The clear and convincing evidence established Dr. Antion's conduct and comments in the February 15, 2003 psychotherapy session, taken in their entirety, constituted an extreme departure from the standard of care. A reasonable and prudent licensed psychologist would not have engaged in conduct similar to that disclosed by the evidence.

The Appropriate Measure of Discipline

67. The Board adopted the recommended guidelines for disciplinary orders and conditions of probation for violations of the Psychology Licensing Law, in keeping with its mandate to protect a particularly vulnerable population of consumers from potentially harmful licensees. If the Administrative Law Judge finds the licensee, for any reason, is not capable of safe practice, the Board expects outright revocation of the license. This outcome is particularly true in any case of patient sexual abuse. In less egregious cases, a stayed revocation with probation pursuant to guidelines is appropriate.

It was not established that Dr. Antion is not capable of safe practice. A revocation is not warranted. Under the guidelines, the following discipline is recommended based upon a finding of unprofessional conduct for repeated negligent acts or gross negligence:

MAXIMUM: Unprofessional conduct involving inappropriate behavior resulting in substantial harm to patient(s).

Penalty: Revocation; denial of license or registration

MINIMUM: Unprofessional conduct involving inappropriate behavior resulting in minimal or no harm to patient(s).

Penalty: Depending upon the circumstances, up to 5 year probation, psychological evaluation and/or therapy if appropriate (2) and (6), oral examination (7) and standard terms and conditions (14-27).

68. The public will be adequately protected by a disciplinary order including a revocation, stayed, with the imposition of three years of probation. Terms and conditions of probation should require Dr. Antion to take a course in providing counseling to adolescent patients, a practice restriction preventing Dr. Antion from seeing teenage female patients individually in psychotherapy sessions (although they may be seen in a family session or in

the presence of another adult) until such a course is successfully completed, an ethics course, and other standard terms and conditions of probation.

Costs of Investigation and Enforcement

69. A certification of Costs was provided. It included investigative costs of \$3,585, all of which were charged to the Board. Nothing was presented to establish what investigative charges, if any, were billed to the Board of Behavioral Sciences.

The fee of the expert witness who testified was \$900. The fee of the expert witness who did not testify has been disallowed. Nothing was introduced to establish what amount, if any, was billed to the Board of Behavioral Sciences, by expert witnesses.

If all the violations of the Psychology Licensing Law had been established as alleged, the Board's reasonable cost of investigation would total \$4,485.

70. A Statement of Costs was provided which stated the deputy attorney general prosecuting this matter spent 49.5 hours in the prosecution of the Board's matter. It set forth an "approximate" breakdown of tasks which included an initial evaluation, preparation of the pleadings, document review, discovery preparation and trial preparation.

A Statement of Costs was provided in the companion manner involving the Board of Behavioral Sciences. It stated the deputy attorney general prosecuting the matter spent 41.50 hours in the prosecution of that matter (which arose out of the same facts). It also set forth an "approximate" breakdown of tasks including an initial evaluation, preparation of the pleadings, document review, discovery preparation and trial preparation.

It was not clear how these disciplinary matters, which arose out of the same facts, required the expenditure of more than 90 hours of attorney time in the prosecution of the matter. The case in chief took less than one full day of hearing time to present and the entire matter was concluded within three days. The attorney fee charged each Board - \$139 per hour - was reasonable.

Given the complexity of this matter, the time spent in hearing, and the representations of the deputy attorney general prosecuting this matter it is concluded that reasonable attorney fees of \$3,750 should be allocated to the Board, a sum representing the Board's share of the reasonable cost of prosecution if all the allegations had been established.

71. However, the most critical charges - sexual abuse and sexual molestation - were not established. The Board's costs of investigation and prosecution were ultimately discounted by one-third to reflect this failure of proof.

It is determined that the Board's recoverable costs of investigation and prosecution in this matter total \$5,490.

LEGAL CONCLUSIONS

Purpose of the Psychology Licensing Law And the Imposition of Administrative Discipline

1. The Psychology Licensing Law includes a legislative finding that the “practice of psychology in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of psychology” *Jaffee v. Psychology Examining Committee* (1979) 92 Cal.App.3d 160, 167-168.

2. The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.

The Standard of Proof

3. The standard of proof in an administrative disciplinary proceeding seeking the suspension or revocation of a professional license is “clear and convincing evidence.” *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.

4. The key element of “clear convincing evidence” is that it must establish a high probability of the existence of the disputed facts, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

5. “Clear and convincing evidence” requires a high probability. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. See, *Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190.

Patient Harm

6. It is not necessary to show patient harm to impose license discipline. To prohibit license discipline until the licensee harms a patient disregards the purposes of an administrative disciplinary proceeding; it is far more desirable to discipline before a licensee harms any patient than after harm has occurred. *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.

Relevant Statutory Authority

7. Business and Professions Code section 2960 provides in part:

"The board . . . may suspend or revoke the registration or license of any registrant or licensee if the . . . licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

...

(j) Being grossly negligent in the practice of his or her profession.

...

(o) Any act of sexual abuse . . .

...

(r) Repeated acts of negligence."

8. Business and Professions Code 726 provides in part:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division . . ."

Sexual Abuse and Sexual Misconduct

9. Cause does not exist to suspend or revoke Dr. Antion's license to practice psychology under Business and Professions Code section 2960, subdivision (o), or under Business and Professions Code section 725. The clear and convincing evidence did not establish that the nature and extent of Dr. Antion's physical touching and self-disclosure in his psychotherapy sessions with CDM involved "sexual abuse" or "sexual misconduct" or "sexual relations with a patient" within the meaning of either statute.

This conclusion is based on Factual Findings 4, 12-34, 38-43, 46-51, 52E, 53, 58 and 64 and on Legal Conclusions 1-8.

The Standard of Care

10. Licensed professionals must exercise that degree of skill, knowledge and care ordinarily possessed and exercised by members of the same profession under similar circumstances. The standard of care is a matter peculiarly within the knowledge of experts; it presents the basic issue and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman. See, *Williamson v. Prida* (1999) 75 Cal.App.4th 1417, 1424.

11. Expert opinion testimony is required to prove or disprove that a licensed professional performed in accordance with the prevailing standard of care. See, *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal. 4th 992, 1001.

Negligence/Gross Negligence/Incompetence

12. "Negligence" is conduct falling below the standard of care. The standard of care varies in different situations, but the standard of conduct remains constant, i.e., due care commensurate with the risk posed taking into consideration all relevant circumstances. *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal. 4th 992, 997.

13. "Gross negligence" is "the want of even scant care or an extreme departure from the ordinary standard of conduct." *Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.App.4th 1175, 1185-1186.

Cause Exists to Discipline Dr. Antion's Psychology License

14. Cause exists under Business and Professions Code section 2960, subdivision (j), to impose discipline against Dr. Antion's license to practice psychology. When his conduct in the February 13, 2001, is considered in its entirety, the clear and convincing evidence established Dr. Antion engaged in gross negligence in the manner in which he engaged in nonsexual physical touching with CDM. When his conduct in the February 13, 2001, is considered in its entirety, the clear and convincing evidence established Dr. Antion engaged in gross negligence by self-disclosing his personal sexual experiences and the sexual experiences of his family members to CDM.

This conclusion is based on Factual Findings 2-4, 9-59, 63 and 66 and on Legal Conclusions 1-7 and 10-13.

15. Cause exists under Business and Professions Code section 2960, subdivision (r), to impose discipline against Dr. Antion's license to practice psychology. When his conduct in the February 13, 2001, is considered in its entirety, the clear and convincing evidence established Dr. Antion's separate departures from the standard of care constituted repeated acts of negligence.

This conclusion is based on 2-4, 9-59, 63, 65 and 66 and on Legal Conclusions 1-7 and 10-13.

The Appropriate Measure of License Discipline

16. The clear and convincing evidence did not establish that Dr. Antion is not capable of same practice. An outright revocation of his license is not warranted. The public will be adequately protected by the imposition of an order of revocation, stayed, with three years probation. Terms and conditions of probation will require Dr. Antion to take a course in providing counseling to adolescent patients, a practice restriction preventing Dr. Antion

from seeing teenage female patients individually in psychotherapy until the remedial course is successfully completed, an ethics course, an obligation to pay reasonable costs of investigation and prosecution, an obligation to pay probation monitoring costs, and other standard terms and conditions of probation. This measure of discipline falls within the Board's disciplinary guidelines.

This conclusion is based on all Factual Findings (except Factual Findings 60-71) and on all Legal Conclusions (Except Legal Conclusions 17 and 18).

Costs of Investigation and Enforcement

17. Business and Professions Code section 125.3 provides in part:

"(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

...

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . . "

18. Cause exists under Business and Professions Code section 125.3 to issue an order directing Dr. Antion to pay the reasonable costs of investigation and enforcement of \$5,490.

This conclusion is based on Factual Findings 69-71 and on Legal Conclusions 9, 14 and 15 and the Factual Findings referred to in those conclusions.

ORDER

Psychologist's License No. PSY 9037 issued to Respondent David Lee Antion, Ph.D. is revoked; provided, however, that the order of revocation is stayed and the license is placed on three years probation on the following terms and conditions:

1. Obey All Laws

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all

violations of law shall be reported by the Respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

2. Coursework

Respondent shall take and successfully complete not less than three college units or the equivalent thereof of educational coursework the first year of probation in the area of providing counseling and psychotherapy to adolescent girls. Coursework must be preapproved by the Board or its designee. All coursework shall be taken at the graduate level at an accredited educational institution or by approved continuing education provider. Classroom attendance is specifically required; correspondence or home study coursework shall not count toward meeting this requirement. The coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval a plan for meeting the educational requirements. All costs of the coursework shall be paid by the Respondent.

3. Ethics Course

Within 90 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a course in laws and ethics relating to the practice of psychology. This course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. This course must be taken and completed within one year from the effective date of this Decision. The cost associated with the law and ethics course shall be paid by the Respondent.

4. Investigation/Enforcement Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$5,490 within the first year of probation. Such costs shall be payable to the Board of Psychology. Failure to pay such costs shall be considered a violation of probation.

5. Probation Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (July 1 - June 30). Failure to pay such costs shall be considered a violation of probation.

6. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation.

7. Probation Compliance

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned District Office of the Medical Board of California or other designated probation monitor. Respondent shall contact the assigned probation officer regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with complainants associated with this case, Board members or members of its staff or persons serving the Board as expert evaluators.

8. Interview with Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

9. Practice Limitation

During probation and until completion of the educational coursework and the ethics course referred to in Conditions 2 and 3, and until he receives prior written approval from the Board of Psychology or its designee authorizing him to provide services to minor female patients without another adult being present in the same room, Respondent shall have an adult third party chaperone present in the same room in which he provides any services to any minor female patient. Respondent shall not provide individual psychotherapy to any minor female patient while he is on probation without prior Board approval.

10. Changes of Employment

Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within 30 days of such change.

11. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

If Respondent leaves California to reside or to practice outside the State or for any reason if Respondent stops practicing psychology in California, Respondent shall notify the Board or its designee in writing within ten (10) days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty (30) days in which Respondent is not

engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to satisfy or reduce the probationary period, although the Board may allow Respondent to complete certain terms of probation that are not associated with active practice.

12. Employment and Supervision of Trainees

Respondent shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees during this probation. Any such supervisory relationship in existence on the effective date of this probation shall be terminated by Respondent and/or the Board.

13. Violation of Probation

If Respondent violates probation in any respect, the Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against Respondent.

14. Completion of Probation

Probation in this matter shall run concurrently with the probationary period granted in the companion matter. Respondent's license shall be fully restored upon the successful completion of probation.

DATED: 12/16/04



JAMES AHLER

Administrative Law Judge

Office of Administrative Hearings